Supreme Court of the United States

October Term, 1933

No. 742

BERTHA MEYER SMITH,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

MOTION OF PETITIONER FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Comes now Bertha Meyer Smith, the petitioner herein, by her counsel, James J. Crossley, and moves and requests this Honorable Court for leave and permission to proceed in completing the presentation of this action in forma pauperis on the ground that the petitioner having put forth every effort possible to pay the costs to this day, finds herself unable to secure and pay the necessary remaining costs for the printing of the record and other expenses for a complete submission of the action to this Honorable Court, as is fully shown by the supporting affidavits hereto attached marked Exhibits "A" and "B" and made a part hereof, all as provided and required by Section 1626 United

States Compiled Statutes, Annotated, 1923, act of June 27, 1922.

Dated at Portland, Oregon this 21st day of March, 1934.

JAMES J. CROSSLEY,
Attorney for Petitioner.

AFFIDAVIT SUPPORTING MOTION TO PROCEED IN FORMA PAUPERIS

EXHIBIT "A"

UNITED STATES OF AMERICA,
DISTRICT OF OREGON,
SUPREME COURT OF THE UNITED STATES,
ON WRIT OF CERTIORARI FROM
UNITED STATES CIRCUIT COURT OF APPEALS, NINTH CIRCUIT,
MULTNOMAH COUNTY, OREGON.

I, Bertha Meyer Smith, the petitioner above named, being duly sworn on oath depose and say that I am a citizen of the United States and a resident of the City of Portland, Multnomah County, Oregon, and have been such for the past twenty-two (22) years, and to the best of my knowledge and belief the allegations set forth in my petition and reply wherein I ask that the Government be required to pay me the insurance due me as beneficiary on the War Risk Insurance

Policy taken out by my son, Elias Melvin Zimmerman, on or about December 3, 1917, for the sum of $10,000.00 and on which in his application therefor he had authorized the Government and Naval authorities to take out their premium of the Six Dollars and Fifty Cents ($6.50) per month without any limitation on the same upon his two succeeding re-enlistments, which insurance I contend was in force and effect on June 30, 1921 at the time he lost his life at sea even though the Naval Paymaster had not taken out the monthly premiums as directed in said application, are true, and that I am entitled to the redress sought by this action and that his order to pay the premiums on the insurance policy continued over each successive re-enlistments to the best of my belief;

That owing to poverty I am not able to bear the further costs of this action for the reasons that I have heretofore put forth every effort possible in securing the money by working and borrowing the same wherever I could borrow it to pay the costs and expenses of printing in the District and Circuit Courts of Appeals and the Seventy-five Dollars ($75.00) already paid into this court, and I am now unable to borrow any more money with which to pay the remaining One Hundred Thirty-five Dollars ($135.00) cost for the printing of the record;

That the only income I have is Twenty Dollars

($20.00) per month compensation from the Government with which to live and it takes all of this with which to buy my food and fuel;

That I have a small home which is appraised by the appraisers of the Home Owners Loan Association for Thirteen Hundred Sixty Dollars ($1360.00) on which I am trying to get a loan from the said Home Owners Loan Association to pay off a Fifteen Hundred Dollar ($1500.00) mortgage which is long past due, together with interest for the past two (2) years and I have been advised that I can only secure the sum of Ten Hundred Twenty-five Dollars ($1025.00) from said Home Owners Loan Association to pay on said mortgage; that I own no other property either personal or real;

That I am a widow and was such at the time of the death of my son, Elias Melvin Zimmerman, who was at the time of his death making allotment to me of one-half of his pay in the Navy;

That I have no one to give me support and that my son, Elias Melvin Zimmerman, whose life was lost at sea in 1921 and for whose insurance I am now asking the Government to pay me, was at that time my sole and only support.

BERTHA MEYER SMITH,
Affiant.

Subscribed and sworn to before me this 21st day of March, 1934.

(Seal)

DAVID E. LOFGREN,
Notary Public for Oregon.
My Commission Expires July 12, 1935.

STATE OF OREGON, }
County of Multnomah } ss.

BE IT REMEMBERED, That on this 21st day of March, 1934, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named Bertha Meyer Smith, who is known to me to be the identical person described in and who executed the within instrument and acknowledged to me that she executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and notarial seal the day and year last above written.

DAVID E. LOFGREN,
Notary Public for Oregon.
My Commission Expires July 12, 1935.

(Seal)

UNITED STATES OF AMERICA,
DISTRICT OF OREGON,
SUPREME COURT OF THE UNITED STATES,
ON WRIT OF CERTIORARI FROM UNITED STATES CIRCUIT COURT OF APPEALS, NINTH CIRCUIT,
MULTNOMAH COUNTY, OREGON.

AFFIDAVIT SUPPORTING MOTION TO PROCEED IN FORMA PAUPERIS

EXHIBIT "B"

I, James J. Crossley, being duly sworn on my oath do depose and say that I am a citizen of the United States, having been born in the State of Iowa, and am an attorney at law, practicing in the City of Portland for the past nineteen (19) years except three (3) years I was in the United States Army and in France and Germany during part of which time I served as Judge Advocate of the 42nd (Rainbow) Division and 6th (Regular Army) Division, having previously served as an officer in the Infantry of the Army, and before that practicing some eight (8) years in Iowa and then six (6) years and one-half as United States Attorney in Alaska, and that I have been admitted to practice in the State and Federal Courts of Iowa, Alaska, and Oregon and in the Circuit Court of Appeals for the Ninth Circuit and in this the Supreme Court of the United States;

That I am attorney for the petitioner and have read over her affidavit supporting her motion to proceed and complete the submission of this action in forma pauperis from this date she having paid the costs and all expenses up to the present time, Seventy-five Dollars ($75.00) of which was in this court and her statements in her affidavits that she is unable to borrow and secure the One Hundred Thirty-five Dollars ($135.00) to pay the remaining costs in this court for the printing of this record is true to the best of my knowledge and belief and likewise her statements set forth in her affidavit as to her financial status are true to the best of my knowledge and belief.

That I myself am paying part of the expenses of the trip to Washington to appear before this Honorable Court to present argument in said action and if the remainder of said expense is paid, the funds will have to be furnished by someone else other than the petitioner and I am myself unable to pay the costs of printing of the record.

All of which is true as I verily believe.

JAMES J. CROSSLEY,
Affiant.

Subscribed and sworn to before me this 212st day of March, 1934.

(Seal)

DAVID E. LOFGREN,
Notary Public for Oregon.
My Commission Expires July 12, 1935.